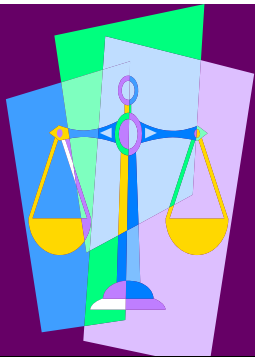


The HIPAA Privacy Rule: Significance for Veterans and their Families

**Patrick Hadley
Office for Civil Rights
March 16, 2006**





Legislative History

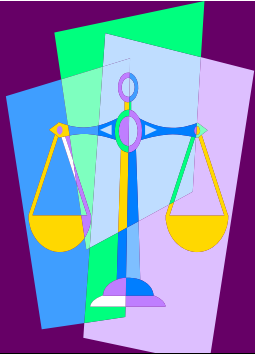
The Health Insurance Portability and Accountability Act of 1996

(Public Law 104-191)

Signed August 21, 1996

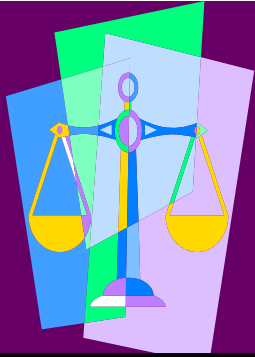
Title II

**Subtitle F -Administrative
Simplification**



Purpose of HIPAA Provisions

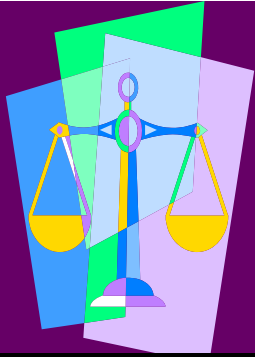
- ◆ Improve efficiency and effectiveness of health care system
 - *by standardizing*
 - the electronic exchange of administrative and financial data
- ◆ Easier information sharing >> security and privacy standards



HIPAA in HHS

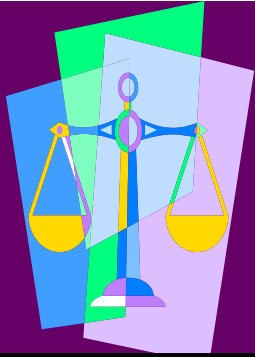
- ◆ OCR (with respect to the Privacy Rule):
 - Sets Policy through Regulations
 - Promotes Voluntary Compliance
 - Investigates and Resolves Complaints

- ◆ CMS (other Admin. Simp. Rules):
 - Security Rule
 - Transactions and Code Sets
 - Provider and Plan Identifiers



Who is Covered?

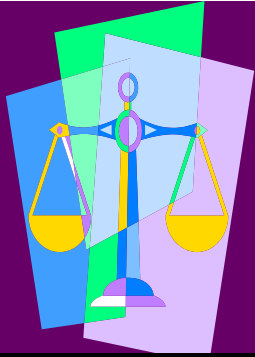
- Limited by HIPAA to:
 - Health care providers who transmit health information electronically in connection with a transaction for which there is a HIPAA standard
 - Health plans
 - Health care clearinghouses



HIPAA and Preemption

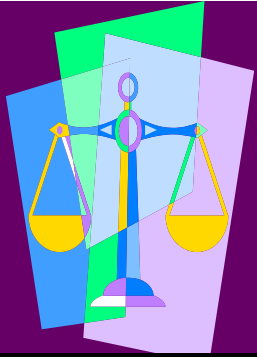
“Federal Floor” of Privacy Protections

- Federal Standards Preempt Contrary State Law
- Except:
 - More stringent privacy requirements
 - Public health reporting
 - Health plan reporting for audit/oversight
 - Secretarial exception determination



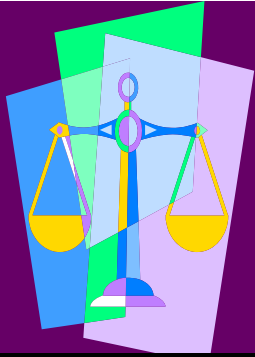
Privacy Rule Overview

- ◆ Balance – Provide Strong Privacy Protections that Do Not Impede Access to Quality Health Care
- ◆ Individual Rights
- ◆ Limits Uses and Disclosures of PHI
- ◆ Recourse for Violations



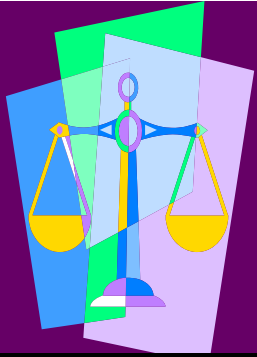
Privacy Rights

- ◆ Notice of Privacy Practices
- ◆ Access
- ◆ Amendment
- ◆ Accounting
- ◆ Request Restrictions
- ◆ Complaints



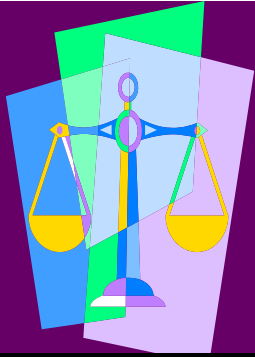
Limited Uses and Disclosures

- ◆ Covered Entity may only Use or Disclose PHI as Permitted or Required by Privacy Rule
- ◆ Covered Entity must make reasonable efforts to use or disclose only Minimum Necessary
- ◆ Protected health information (PHI)
 - Individually identifiable health information
 - Transmitted or maintained in any form or medium by a Covered Entity or its Business Associate



Permitted Uses and Disclosures

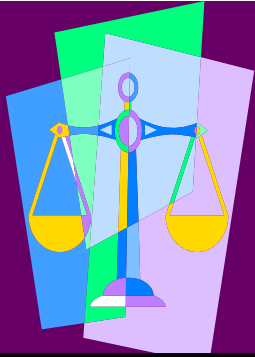
- ◆ Individual
- ◆ Treatment, Payment and Health Care Operations (TPO)
- ◆ Opportunity to Agree or Object
- ◆ Public policy
- ◆ “Incident to”
- ◆ Authorized



Treatment, Payment and Health Care Operations (TPO)

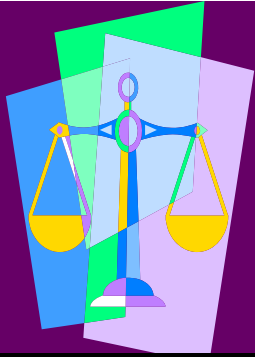
Covered Entity may use/disclose PHI to carry out essential health care functions

- Treatment
- Payment
- Health care operations



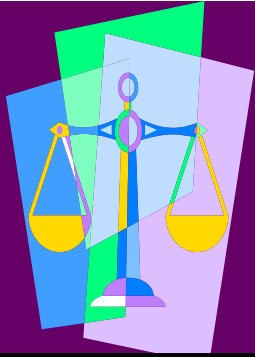
Disclosures to Friends and Family

- ◆ Covered entities (e.g., health plans or health care providers) may disclose to the individual's
 - family member or relative,
 - close personal friend, or
 - other person identified by the individual,
- ◆ the PHI directly relevant to that person's involvement in the individual's care or payment for care
 - If individual present – requires opportunity to agree or object to disclosure
 - If individual not present or incapacitated – requires professional judgment on best interests of patient



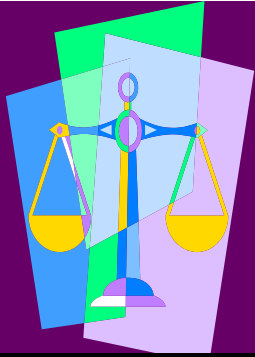
Public Policy Purposes

- ◆ As required by law
- ◆ For public health
- ◆ To report victims of abuse, neglect or domestic violence
- ◆ For health oversight activities
- ◆ For judicial & administrative proceedings
- ◆ For law enforcement purposes
- ◆ About decedents (to coroners, medical examiners, funeral directors)
- ◆ For cadaveric organ, eye or tissue donations
- ◆ For research purposes
- ◆ To avert a serious threat to health or safety
- ◆ For specialized government functions (military, veterans, national security, protective services, correctional institutions)
- ◆ For workers' compensation



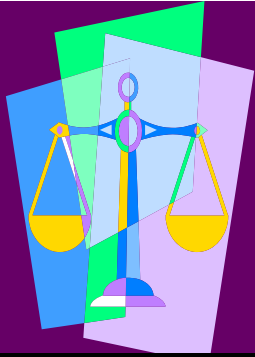
Uses and Disclosures for Military and VA Activities

- ◆ To military command as necessary for proper execution of military mission
- ◆ DoD to VA upon separation or discharge of individual from Armed Forces to determine eligibility or entitlement to VA benefits
- ◆ VHA to other components within VA that determine eligibility or entitlement to VA benefits



Uses and Disclosures Requiring Authorization

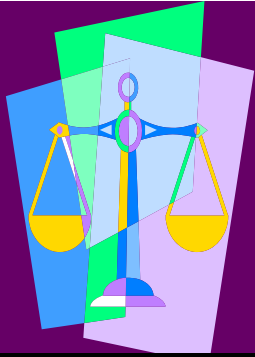
- ◆ Authorizations required for uses and disclosures not otherwise permitted or required by the Privacy Rule:
 - Most Marketing
 - Special Rules for Psychotherapy Notes
 - Relevant for some veterans and their health care providers



Privacy Rule and SAMHSA “Part 2” Guidance

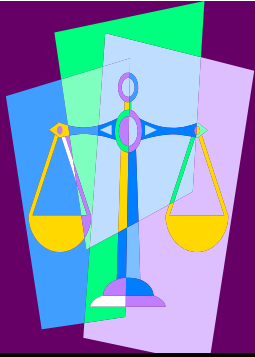
◆ Privacy Rule-Part 2 Guidance

- The Substance Abuse & Mental Health Services Administration (SAMHSA) has published guidance on the Privacy Rule to help alcohol and substance abuse programs and others understand responsibilities under both the Privacy Rule and 42 CFR Part 2 (confidentiality of alcohol and drug abuse patient records regulation).
- <http://www.hipaa.samhsa.gov/Part2ComparisonCleared.htm>



Investigations & Compliance Reviews

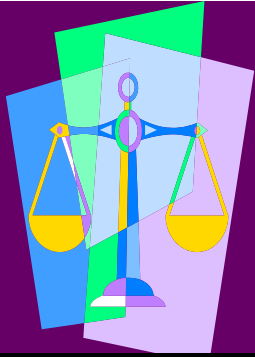
- ◆ OCR may investigate complaints.
 - A complaint may be brought by any person.
 - Not limited to the patient, their personal representative or a healthcare provider.
 - Complaints must be in writing, identify the Covered Entity alleged to be in violation of Privacy Rule and be filed within 180 days of occurrence.
- ◆ OCR may conduct compliance reviews to determine whether Covered Entities are in compliance.



Status of Complaints

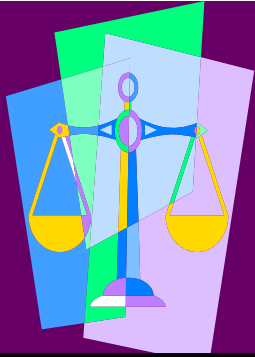
(Through February 28, 2006)

- ◆ 18,300 logged in nationally, 72% already closed.
- ◆ Most common closure reasons:
 - Non-jurisdictional (Not Covered Entity or Violation alleged predated 4/14/2003);
 - Allegation not prohibited by the Privacy Rule;
 - Matter was resolved through voluntary compliance and technical assistance.



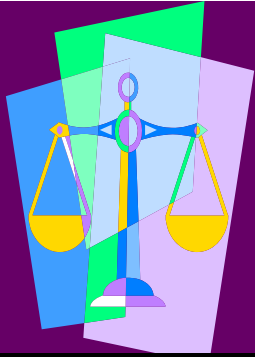
Entities Most Complained Against (as of 2/28/2006)

- ◆ Private Health Care Practices
- ◆ General Hospitals
- ◆ Outpatient Facilities
- ◆ Group Health Plans and Health Insurers
- ◆ Pharmacies



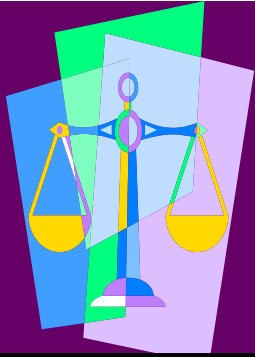
Common Allegations (through February 28, 2006)

- ◆ Impermissible uses/disclosures of PHI
- ◆ Lack of adequate safeguards to protect PHI
- ◆ Refusal or failure to provide individual with access to or copy of records
- ◆ Disclosing more than the minimum information necessary to satisfy a particular request for information
- ◆ Failure to obtain a valid authorization for a disclosure that requires one



Why Voluntary Compliance?

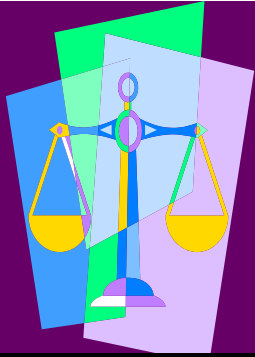
- ◆ Most effective way to obtain industry compliance with the Privacy Rule.
- ◆ Promoted by HIPAA statute and Privacy Rule:
 - Education, Cooperation, Technical Assistance
 - Can help mitigate civil money penalties (CMPs)



New Final Enforcement Rule

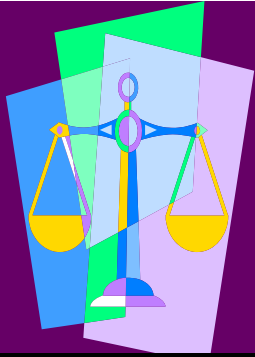
71 FR 32, P.8390 (Feb. 16, 2006)

- ◆ Effective March 16, 2006
- ◆ Strengthens OCR authority to enforce Privacy Rule
 - Note: Final Enforcement Rule applies to all HIPAA Rules (OCR and CMS administered)
- ◆ CMPs can be imposed by OCR:
 - \$100 per violation;
 - Capped at \$25,000 for each calendar year for each identical requirement or prohibition that is violated;
 - Covered Entity has a right to notice and a hearing before a CMP becomes final.



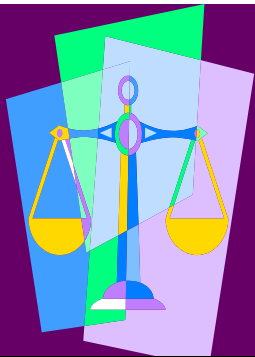
Criminal Penalties for Wrongful Disclosures

- ◆ For knowingly obtaining or disclosing identifiable health information relating to an individual in violation of the Rule:
 - Up to \$50,000 & 1 year imprisonment;
 - Up to \$100,000 & 5 years if done under false pretenses;
 - Up to \$250,000 & 10 years if intent to sell, transfer, or use for commercial advantage, personal gain or malicious harm.
- ◆ Enforced by DOJ:
 - OCR has made nearly 300 such referrals through February 28, 2006.



New FAQ on Notification re: Notice of Privacy Practices

- ◆ Requirement for Health Plans re: Notice Reminder
 - Remind enrollees of availability of Notice of Privacy Practices and how to obtain copy
 - No less frequently than once every 3 years
- ◆ Health plans may satisfy this requirement in a number of ways, including by:
 - Sending full copy of Notice
 - Mailing reminder concerning availability of Notice of Privacy Practices and information on obtaining copy
 - Including information about availability of Notice and how to obtain copy in plan-produced newsletter or other publication information



More Information

www.hhs.gov/ocr/hipaa/